IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-621

STATE OF ARIZONA, PETITIONER

v.

WILLIAM DALE MANYPENNY, RESPONDENT

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Respondent MANYPENNY asserts on pages 12 through 18 of his response that Arizona law would not allow the State of Arizona to seek appellate review from the trial court's sua sponte entry of a judgment of acquittal eleven months after the jury has returned a

guilty verdict. The issue of whether Arizona law allows appellate review in this situation is also discussed in the dissenting opinion of Judge Kennedy in the instant case. (Reported at 608 F.2d 1197; footnotes 2 and 3 found at 608 F.2d at 1203) A recent unanimous opinion issued by the Arizona Supreme Court demolishes this contention of the Respondent. State ex rel. Hyder v. Superior Court, ____ Ariz. ____, ____ P.2d ____ (Arizona Supreme Court No. 14579, opinion issued January 16, 1980) (reproduced at pages 4 through 8 infra) is directly on point. In that case, the trial court entered a judgment of acquittal as to first degree murder on its own motion eighty days after the jury returned a guilty verdict. The Arizona Supreme Court ruled the trial court had no power to do this and vacated the entry of the judgment of acquittal. This opinion was rendered after

the Ninth Circuit issued its opinion in the instant case and after the State's Petition For Writ Of Certiorari was filed on October 11, 1979.

Respectfully submitted this 3rd day of March, 1980.

STEPHEN D. NEELY
PIMA COUNTY ATTORNEY

Daniel Jesse Smith
Deputy County Attorney
Attorneys for Petitioner

IN THE SUPREME COURT OF THE STATE OF ARIZONA
En Banc

STATE OF ARIZONA ex rel. CHARLES F. HYDER, MARICOPA COUNTY ATTORNEY, Petitioner, v. SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa, THE HONORABLE WARREN L. McCARTHY, JUDGE, Respondents, and JOHN CALLES MOYA, JR., Real Party in Interest.	)	Filed: Jan. 16, 1980 No. 14579

SPECIAL ACTION

Prayer for Relief Granted

Charles F. Hyder
Maricopa County Attorney
By Mark Deutsch
Deputy County Attorney — Phoenix
Attorneys for Petitioner

Ross P. Lee
Maricopa County Public Defender
By Anne Kappes
Deputy Public Defender — Phoenix
Attorneys for Real Party in Interest

HAYS, Justice

John Calles Moya, real party in interest, was convicted by a jury of first-degree murder. Eighty days after the jury verdict, the trial court, assuming inherent power to modify the verdict, entered a judgment of acquittal on the charge of first-degree murder, and a judgment of guilty of second-degree murder.

Petitioner, State of Arizona, brought this special action, urging that respondent exceeded his authority. We accepted jurisdiction under Rule 4, Rules of Procedure for Special Actions.

We have a single issue to resolve: May the court, on its own motion, enter a judgment of acquittal after the verdict?

On three occasions--at the close of the state's evidence, at the close of all the evidence, and immediately after the verdict--real party in interest moved for a judgment

of acquittal. The court denied all three motions.

One week after the verdict, counsel for Moya moved for a new trial under Rule 24, Rules of Criminal Procedure. The court twice heard arguments on this motion, took it under advisement, and ultimately denied it.

Rule 20, Rules of Criminal Procedure, governs disposition of motions for acquittal. The pertinent portions of the rule follow:

> a. Before Verdict. On motion of a defendant or on its own motion, the court shall enter a judgment of acquittal . . . after the evidence on either side is closed, if there is no substantial evidence to warrant a conviction.
>
> b. After Verdict. A motion for judgment of acquittal made before verdict may be renewed by a defendant within 10 days after the verdict was returned.

Careful reading of this rule makes it plain that the court may render a judgment of

acuittal, sua sponte, only before the case is submitted to the jury. Section B allows the defendant to renew a previously made motion after the verdict if the renewal is timely.

There is no authority for the court, on its own motion, to enter a judgment of acquittal after a jury verdict. As we most recently pointed out in State of Arizona v. Superior Court, County of Pima (No. 14526-PR, filed November 28, 1979), the court's authority in post-verdict proceedings is strictly limited by the Rules of Criminal Procedure.

The judgments of September 24, 1979, are hereby vacated and this case is remanded for proceedings consistent with this opinion.

JACK D. H. HAYS
Justice

CONCURRING:

FRED C. STRUCKMEYER, JR.
Chief Justice

WILLIAM A. HOLOHAN
Vice Chief Justice

JAMES DUKE CAMERON
Justice

FRANK X. GORDON, JR.
Justice